89-820

Supreme Court, U.S.
FILED
OCT 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

MARION KINDIG, Petitioner

vs.

PAN AMERICAN WORLD AIRWAYS, INC, ET AL,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARION KINDIG
P. O. Box 19751
Houston, Texas 77224
(713) 785-1767
Petitioner in pro se

ISSUES PRESENTED FOR REVIEW

1. Does Petitioner have the right to a jury trial before an impartial judge?

2. Did judge Schnacke err in refusing to recuse himself under 28 U.S.C., §144, Article III, Section 1 of the Constiution and the Code of Judicial Conduct?

3. Was the refusal to permit discovery in violation of Petitioner's rights?

4. Were the ex-parte communications and hearings in violation of Petitioner's Constitutional rights?

5. Did the Ninth Circuit Court of Appeals have the authority to deny sending a Certificate of Necessity under 28 U.S.C.S. §291(a) and §292(d), requesting that Chief Justice Rehnquist send an Out-of-Ninth-Circuit judge to hear the Fraud-Upon-the Court?

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

MARION KINDIG, Petitioner

vs.

PAN AMERICAN WORLD AIRWAYS, INC., INDEPENDENT UNION OF FLIGHT ATTENDANTS, UNITED AIRLINES, INC., C. EDWARD ACKER, MARTIN SHUGRUE, RAY GREEBY, MARTIN MUELLER, BONNIE SINGER, GEORGE HOBDELL, ANN DELANEY, HARRY ENSLEY, LINDA KELLY, GERARD MORAN, STEPHEN SIMMONS, HENNING, WALSH & RITCHIE, JAMES RITCHIE, VICTOR THUESSEN, MIKE GAITLEY, ANN MARIE LARDEAU, UTE HARRISS, DORIS SCHER, BRIAN MOREAU, ALICE FLYNN, JUDY HOLDER, JOHN GALLAGHER, MARGARET BRENNAN, RICHARD FERRIS, DAVID PRINGLE, AND GLEN SCOGGINS,
Respondents

Additional Respondents Involved Only In the Motion to Have Chief Justice William Rehnquist Assign an Out of Ninth Circuit Judge to Hear The Fraud Upon the Court Under 28 U.S.C.S. 291(a) and U.S.C.S. 292(d):
JUDGES ROBERT SCHNACKE, MARILYN PATEL, WILLIAM SCHWARZER, ROBERT PECKHAM, WILLIAM INGRAHAM, JAMES BROWNING, ALFRED GOODWIN, CYNTHIA HOLCOMB HALL, JOSEPH T. SNEED, PROCTOR HUG, JR., MARY M. SCHROEDER AND ROBERT R. BEEZER
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The petitioner Marion Kindig respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on July 3, 1989, July 6, 1989, July 7, 1989 and July 31, 1989.

OPINIONS BELOW

The opinions and orders rendered by the Court of Appeals for the Ninth Circuit are reprinted in the appendix attached hereto.

On July 3, 1989, the United States Court of Appeals for the Ninth Circuit denied a motion and a reconsideration of that motion, to have a Certificate of Necessity sent to Chief Justice William Rehnquist under U.S.C.S. 291(a) and U.S.C.S. 292(d) to assign an Out-of-Ninth-Circuit Panel of Judges Investigate the Fraud Upon the Court.

The July 3, 1989, order further denies "The June 6, 1989, request for documentation" -- which request pertains to ex-parte com-

munications and hearings which took place between Pan American World Airways, Inc., (hereinafter referred to as Pan Am), its attorneys, and Judges Robert Schnacke, his law clerk James Grindlinger, Judge Marilyn Patel and William Schwarzer. Illicit and illegal orders were issued on the basis of these ex-parte hearings and communications -- where only the defendants attorneys were allowed to be present, and plaintiff-appellant -petitioner was not allowed to be present, to be heard, to present witnesses or to present evidence. The July 3, 1989, order denies the production of transcripts, documentation and affidavits from those present at the ex-parte communications and hearings revealing what transpired during same.

The July 6, 1989, order denies a rehearing of the court order of April 28, 1989. The July 31, 1989, similarly denies a stay pending appeal of an April 21, 1989 motion.

The July 6, 1989, and July 31, 1989, orders pertain to petitioner's motion for a stay pending appeal, of the illicit orders which issued as a result of the aforementioned ex-parte communications and hearings.

The July 7, 1989, order denies correction of a transcript and orders that:

> "Appellant shall renew her motion before the district court within 7 days from entry of this order."
>
> and
>
> "This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order."

As was obviously well known to the Ninth Circuit Court of Appeals, its order of July 3, 1989, made such renewal and reconsideration impossible, thereby effectively denying correction of the transcript. Namely, the July 3, 1989, order states:

> "The June 16, 1989, request for a 30-day stay of further proceedings in these consolidated appeals due to illness is granted. Further proceedings in these consolidated appeals are stayed for 30 days."

JURISDICTION

Petitioner brought this suit in the United States District Court for the Northern District of California. Jurisdiction is invoked under 45 U.S.C.§151, et seq. (under the Railway Labor Act for massive violations, breaches and alterations of the Collective Bargaining Agreement -- a "major dispute'); violations of the Railway Labor Act itself; under 28 U.S.C., §1337; under 29 U.S.C. §621 for violations and breaches of the ADEA; under Title VII, 41 U.S.C. §2000e-5 and 42 U.S.C 2000e-5(g) for breaches and violations in Employment Discrimination; under ERISA 29 U.S.C. §1140 and §502 for violating the ERISA laws by interfering with the attainment of any or benefit to which a participant may become entitled; and for further massive violations of the ERISA laws by looting of the Pan Am employee pension funds to the tune of $621.3 (see the January 9, 1989, Federal Register -- 54 FR 707), plus an additional amount

since that date, the full extent of which is unknown to petitioner at this time. 40,000 present and potential beneficiaries are affected by the aforementioned.

This petition for writ of certiorari is filed pursuant to Rules 17.1 (a) and (c) of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case is very significant in that it involves pension funds which have been plundered in the amount of approximately $750 million -- the exact amount is at this point unknown to petitioner -- and it involves 40,000 present and potential beneficiaries. It also involves Federal judges barring access to discovery, denying a jury trial, preventing a trial from taking place, and Federal judges allowing, aiding and abetting Pan Am to continue its plunder of the pension funds unabated, including the

defrauding of individual beneficiaries thereof.

The Constitutional provisions which have been violated are in part:

Amendment I - the right to petition Government for grievances.

Amendment IV - the right of the people to be secure in their persons, effects, against unreasonable seizures.

Amentment V - no person shall be deprived of property without due process of law.

Amendment VI - a citizen's right to a speedy trial, by an impartial jury of the State and District ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor.

Amendment VII -- In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Amendment VIII - Excessive fines shall not be imposed.

Amendment XIV -- No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

Article III, Section 1: "The Judges, both of the supreme and inferior Courts, shall hold their offices during good behavior."

STATEMENT OF THE CASE

Petitioner has been a long-time employee of Pan Am, having been employed as a Flight Attendant and as an In-Flight Purser.

In 1985, Pan Am went on a campaign to divest itself of its "A-scale employees (those hired before 1985), and proceeded to replace them with a "B-scale" employee at 1/3 to 1/2 the salary. Thousands of Pan Am employees have lost their jobs in all segments of the Pan Am workforce.

Petitioner was one of the casualties. While on a personal, non-paid leave of absence (which Pan Am encourages employees to take when it has a temporary excess), petitioner received a mailgram stating that Pan Am has accepted her voluntary resignation for not being on standby March 12, 13 and

14, 1985. Not only had Petitioner never been notified of the aforementioned standby days, but it would have been in violation of the Collective Bargaining Agreement to recall Petitioner from said leave of absence.

Toward the latter part of 1985, United Airlines, Inc., (hereinafter referred to as United), announced its intention to purchase Pan Am's Pacific Division for $750 million. United represented to the Department of Transportation; the Pan Am flight attendants; and to Petitioner herself, that along with the route transfer it would employ 1,202 Pan Am flight attendants in order of first Pacific language qualification, and then by seniority -- provided said flight attendant could pass United's medical exam and 4 days of training classes. Petitioner passed both United's medical and the 4 days of classes.

In the interim, Petitioner's arbitration case was in progress at Pan Am. Additionally,

a Preliminary Injunction was obtained from the Honorable Eugene F. Lynch on February 11, 1986, ordering Pan Am to immediately change its employment records to reflect the restoration of Petitioner:

> "to active employment status in such a manner and for such a period as is required for consideration by United Airlines for her hiring as a flight attendant in connection with the current change over of personnel from Pan Am to United pursuant to United's acquisition of Pan Am's Pacific routes".

This order was telephoned to United by Pan Am, as well as by Petitioner, on February 11, 1986. United ignored the order, as well as the representations it had made to the Department of Transportation, the Pan Am flight attendants and to Petitioner.

United hired flight attendants at Petitioner's San Francisco base -- including the most junior flight attendant at the San Francisco base -- all in violation of the verbal and written representations which United had made. An arbitrator confirmed

judge Lynch's Preliminary Injunction, ruling that Petitioner:

> "was entitled to be continued on the company's records as an active employee".

This was the last hurdle to enable Petitioner to transfer to United.

Pan Am refused to comply with the arbitrator's award, and did not change its records to reflect Petitioner as an active employee. Instead, it demanded that Petitioner take a "pre-employment" medical exam -- under threat of termination. Then it was demanded that "as a prelude to returning to active status", Petitioner be forced to fly on Pan Am to Miami for an emergency training class, wherein she would be the only student and the only others present would be Pan Am management personnel. A letter from Pan Am stated, "You will remain on a leave of absence".

There was no reason whatsoever for Pet-

itioner to take a Pan Am medical exam and training class, as the arbitrator's award cleared the way for Petitioner to transfer to United. Additionally, in order to take a flight to a training class, according to the contract, a flight attendant must be on active status, be paid flight time to and from the class, and must be paid 4 hours flight time for each day of new classes. A training class normally has 20-25 students, and Petitioner knew of at least one other flight attendant who had won a lawsuit against Pan Am and suddenly found herself unable to pass the relatively easy emergency classes.

Petitioner filed a motion to enforce the arbitrator's award, which judge Robert Schnacke denied. Petitioner also immediately filed for a stay of the arbitrator's award until such time as she could transfer to United, voicing the fear that Pan Am would terminate her at the sham emergency class and take away the lifetime future benefits

to which she is entitled. Judge Schnacke refused to grant the stay. Whereupon, Petitioner immediately filed for a tempory restraining order, emphasizing the urgency of the situation. Judge Schnacke refused to grant that as well.

When Petitioner was unable to attend the emergency class because she was in surgery for the removal of a tumor, Pan Am terminated her and took away the lifetime future benefits to which she is entitled (namely, hospitalization, medical, dental, vision, prescription and travel) for the bizarre reason that while she was in surgery she did not personally call Pan Am, but instead had someone notify Pan Am on her behalf.

Not only did Judge Schnacke aid and abett Pan Am in defrauding Petitioner out of the lifetime future benefits to which she is entitled, but he would not take any action while Pan Am was looting the pension plans

on a wholesale basis.

At the time the marauding of the pension plans was first brought to judge Schnacke's attention, the plans were underfunded by approximately $300 million. Petitioner made the request that part of the $750 million received from United be used to refund the pension plans. Not only was this not done, but judge Schnacke allowed Pan Am to continue the plunder of the plans to $621.3 million, as per the January 9, 1989, Federal Register.

Judge Schnacke also barred any discovery attempts to ascertain the names of those violating their fiduciary duties, as well as any discovery relating to the other causes of action in the case. He refused to compel the defendants to answer interrogatories or produce documents, quashed every deposition subpoena, prevented any witness from ever being called, did not allow a jury to hear the case and prevented there from ever being a trial.

It appearing that the defendants were able to exert a malign influence upon judge Schnacke, Petitioner filed a motion to disqualify him under 28 U.S.C. §144, for bias and prejudice, and also for violations of the Code of Judicial -- of which he is in serious violation of at least Canons I, II and III. This is in part as a result of his being caught in an establishment when it was raided by the San Francisco Vice Squad and there were arrests for pimping, prostitution, soliciting an act of prostitution and being in a house of prostitution. Judge Schnacke's name appears in Police Report No. 850099603. He is also in violation of Article III, Section 1, of the Constitution, which states:

> "The Judges, both of the supreme and inferior Courts, shall hold their offices during good behavior."

When judge Schnacke was served with a deposition subpoena for the aforementioned hearing, he had his law clerk make an improper

ex-parte telephone call to Pan Am's lawyer, requesting that she quash his deposition subpoena and also the deposition subpoena of Police Lt Christopher Weld, who was wear- a microcassette which recorded the ongoing antics.

In violation of Petitioner's Constitutional right to due process, there were ex-parte hearingsand communications between the defendants in the case and Judges Schnacke, Patel and Schwarzer. On the basis of those illicit ex-parte communications and hearings, orders were issued without allowing Petitioner to be present, to be heard, to give evidence and to present witnesses. On the basis of those illegal orders, Petitioner was ordered to pay Pan Am's attorney $1,950 in legal fees and is the subject for the writ of certoriari on the orders of July 3, 1989, and July 31, 1989. These illegal orders were upheld in the Ninth Circuit Court of Appeals.

The July 3, 1989, order also disallows any transcripts of the ex-parte communications and hearings -- or affidavits from those present as to what transpired. The attached July 6, 1989, order denies a stay of the illicit orders until such time as the appeal has been heard.

The attached July 7, 1989, order makes it impossible for Petitioner to correct the transcript of the November 10, 1989, hearing -- as it orders that the motion to renew shall be made within 7 days of the order. It further states that the order is subject to reconsideration by a judge if any objection is filed within ten days of the entry of the order. As the Appellate court must have known, it had issued an order staying all proceedings for 30 days from July 3, 1989 -- making it impossible to correct the transcript.

REASONS FOR GRANTING THE WRIT

This case involves the pillaging of pen-

sion funds which have been plundered for more than $621.3 million (see Federal Register of January 9, 1989). These are funds which 40,000 current beneficiaries and potential beneficiaries are relying on for their livelihood. They are benefits for which they worked many years and which are rightfully theirs. There was a total coverup of this case which occurred not only at the District Court level involving judges Schnacke, Patel and Schwarzer -- but it extended to the Ninth Circuit Court of Appeals as well.

There were massive violations of Petitioner's Constitutional rights by holding ex-parte hearings and communications; denying Petitioner the right to attend hearings, to be heard, to present witnesses and to present evidence; issuing illicit orders based upon ex-parte contacts; denying due process; denying a jury trial; and in fact, disallowing any trial to take place at all; and being denied a fair trial by an impartial

judge who is free from malign influences.

Not only have the employee pension plans been plundered, but Petitioner was individually defrauded out of the lifetime benefits to which she is entitled, with the help of the Ninth circuit judiciary and in violation of the ERISA laws of which 29 U.S.C. §502 states in relevant part:

> "It shall be unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan in this title Section 3001 of the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this title, or the Welfare and Pension Plans Disclosure Act."

There were 26 documented violations of the Collective Bargaining Agreement (it is a criminal violation of the Railway Labor Act, 45 U.S.C. §151, et seq., to willfully fail to comply with a Collective Bargaining Agreement) -- however, judge Schnacke allowed this to continue unabated.

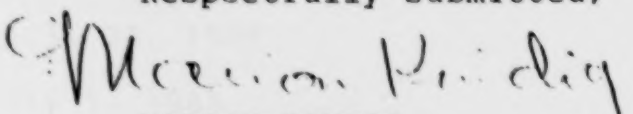
This is an important case worthy of Supreme Court consideration, not only because 40,000 people have had what is rightfully theirs plundered, but because if a citizen of the United States cannot be guaranteed a fair trial, free from a malign influence, and with all of the rights that the people of this nation are led to believe they have under the Constitution -- then freedom will soon disappear.

CONCLUSION

For all of the above reasons, I urge the honorable Justices of the Supreme Court to grant this petition for a Writ of Certiorari. I further urge Chief Justice William Rehnquist to assign an Out-of-Ninth-Circuit Judge to investigate the Fraud Upon the Court in the instant case -- or to assign judge Louis Bechtle (who is already in San Francisco hearing the criminal trial of Ninth Circuit judge Robert Aguilar, who has been indicted by the Justice Department for "running his

office like a racketeering enterprise", conspiracy and attempting to influence other judges in criminal cases).

Respectfully submitted,



MARION KINDIG
P. O. Box 19751
Houston, Texas 77224
(713) 785-1767
Petitioner in Pro Se

October 2, 1989

APPENDIX

Order filed July 3, 1988

Order filed June 14, 1988

Order filed July 6, 1988

Order filed April 28, 1988

Order filed July 7, 1988

Order filed July 31, 1988

Letter of November 3, 1988 by Pan Am's attorney, Dian Emerson, admitting ex-parte communication with Judge Schnacke's clerk and ex-parte motion.

Order of November 7, 1988, issued on the basis of ex-parte communications, ex-parte motions (which were replete with false statements) -- and without allowing plaintiff to be present, to be heard, to present witnesses; to present evidence; and without due process -- all in violation of plaintiff's Constitutional rights.

UNITED STATES COURT OF APPEALS

FOR THL NINTH CIRCUIT

Filed
July 3, 1989

MARION KINDIG	Nos. 89-15074
	89-15401
Plaintiff-Appellant	89-15514
vs.	DC CV-86-0198 RHS
	Northern Calif.
PAN AMERICAN WORLD AIR-WAYS, INC., ET AL	(San Francisco)
	ORDER
Defendants-Appellees,	

Before: SCHROEDER and BEEZER, Circuit Judges

The June 22, 1989 motion for reconsideration of this court's order of June 14, 1989, is denied. The request that the court require appellees to re-serve a copy of the motion to consolidate these appeals on appellant is denied. Appellant is advised that the request for consolidation is contained in appellees' response to her motion to investigate fraud on the court. The June 14, 1989 motion to expedite hearing on appellant's

motion to expedite hearing on appellant's motion to investigate fraud on the court is denied as moot. No further motions for reconsideration of this court's June 14, 1989 order will be entertained.

The June 6,1989 request for documentation is denied. The June 16, 1989 motion for a 30 day stay of further proceedings in these consolidated appeals due to illness is granted. Further proceedings in these consolidated appeals are stayed for 30 days from the date of this order. Upon expiration of the stay, the Clerk shall set one Time Schedule Order governing these three consolidated appeals.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED June 14, 1989

Cathy Catterson, Clerk

U. S. Court of Appeals

MARION KINDIG, Plaintiff-Appellant vs. PAN AMERICAN WORLD AIRWAYS, INC., et al Defendants-Appellees	No. 89-15074 DC# CV-86-0198-RHS Northern California (San Francisco)
MARION KINDIG, Plaintiff-Appellant vs. PAN AMERICAN WORLD AIRWAYS, INC., et al Defendants-Appellees	No. 89-15401 DC# CV-86-0198-RHS Northern California (San Francisco)
MARION KINDIG, vs. PAN AMERICAN WORLD AIRWAYS, INC., et al Defendants-Appellees	No. 89-15514 DC# CV-86-0198-RHS Northern California (San Francisco) ORDER

Before: SCHROEDER and BEEZER, Circuit Judges

Appellant's April 20, 1989 motion to investigate fraud on the court and to have this matter heard by a panel of judges from outside of the Ninth Circuit is denied. Appellees' motion to consolidate these cases is granted. Appeal Nos. 89-15074, 89-15401 and 89-15514 are hereby consolidated.

MoCal 6-12-89

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Filed July 6, 1989

MARION KINDIG,	) Nos. 89-15074
	) 89-15401
Plaintiff-Appellant	)
	) DC CV-86-0198
vs.	) RHS
	) N. California
PAN AMERICAN WORLD AIRWAYS INC., ET AL	) (San Francisco)
	)
	) ORDER
Defendants-Appellees.	)

Before: ALARCON and NORRIS, Circuit Judges

Appellant's motion for a rehearing of a portion of this court's April 28, 1989 order is denied.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED Apil 28, 1989

Cathy A. Catterson, Clerk

U. S. Court of Appeals

MARION KINDIG,	) Nos. 89-15074
Plaintiff-Appellant	) 89-15401
vs.	) DC# CV-86-0198RHS
PAN AMERICAN WORLD AIRWAYS, INC., et al.	) Northern California) (San Francisco)
Defendants-Appellees	)

Before: ALARCON and NORRIS Circuit Judges

Appellant's renewed motion for a stay pending appeal, filed on April 7, 1989, is denied.

Appellant's motion for reconsideration of this court's April 6, 1989 order denying appellees' motion to consolidate is granted. These appeals are consolidated. The briefing schedule set in appeal no. 89-15074

is vacated. The schedule set in appeal no. 89-15401 shall control the briefing in these consolidated appeals.

MoCal 4/26/89

2

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Filed July 7, 1989

MARION KINDIG,	)	Nos. 89-15074
	)	89-15401
Plaintiff-Appellant,	)	89-15514
	)	
vs.	)	DC CV-86-0198 RHS
PAN AMERICAN WORLD AIR-WAYS, INC., ET AL.	)	N. California (San Francisco)
	)	
Defendants-Appellees.	)	ORDER

Appellant has moved to correct the transcript of the November 10, 1988 hearing reported by William Johnston; appellee the Independent Union of Flight Attendants has responded to the motion. The motion is denied without prejudice to a renewal of the motion before the district court. Fed. R. App. P. 10(e). Appellant shall renew her motion before the district court within 7 days from the entry of this order. The district court is requested to transmit the certificate of record for No. 89-15074 as soon as is practicable after the Rule 10(e) motion is decided.

Appellant's motion to strike appellee the Independent Union of Flight Attendant's memorandum is denied.

This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order.

For the Court:

CATHY A. CATTERSON
Clerk of the Court

_____

Cole Benson
Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Filed July 31, 1989

MARION KINDIG,	Nos. 89-15074
	89-15401
Plaintiff-Appellant	89-15514
vs.	DC CV-86-0198 RHS
	Northern California
PAN AMERICAN WORLD AIR-WAYS, INC., ET AL	(San Francisco)
	ORDER
Defendants-Appellees	

Before: TANG and KOZINSKI, Circuit Judges

The April 21, 1989 motion for a stay pending appeal filed in appeal no. 89-15514 is denied. See Lopez v. Heckler, 713 F.2d 1432, 1435 (9th Cir.), rev'd in part on other grounds, 463 U.S. 1328, 464 U.S. 879 (1983). The June 6, 1989 "request for documentation" is also denied.

Heller, Ehrman, White & McAuliffe

333 Bush Street

San Francisco, California 94104

November 3, 1989

Hon. William W. Schwarzer

United States District Judge

450 Golden Gate Avenue

San Francisco, California 94102

Kindig v. Pan American World Airways, Inc.

No. C 86-0198 RHS

Dear Judge Schwarzer:

In your capacity as General Duty Judge, I am submitting to you an ex parte motion to quash a subpoena and notice of deposition directed to Judge Schnacke by the plaintiff in the above-referenced case. Ms. Kindig is attempting to take the deposition of Judge Schnacke on November 7, 1988, and to compel him to produce documents concerning his private affairs and professional credentials.

On Tuesday, November 1, 1988, I received

a telephone call from James Grindlinger, law clerk to Judge Schnacke. Mr. Grindlinger relayed Judge Schnacke's request that I file a motion on the judge's behalf with the general duty judge to quash or strike the notice of deposition and subpoena filed by the plaintiff. I contacted your deputy, Ms. Bailey, to make arrangements to submit the motion.

Enclosed please find an ex parte motion, a memorandum of points and authorities and a proposed order for your consideration. Please contact me if you require further information or have any questions. Because of time constraints imposed by the plaintiff in setting the deposition for Monday of next week, I would appreciate your prompt attention to this matter on behalf of Judge Schnacke and the defendants.

Very truly yours,

(signed)

Dian Emerson

JOSEPH R. KNOCK
c/o Pan Am Legal Department
200 Park Avenue, 9th Floor
New York, N. Y. 10166
Telephone: (212) 880-1121

STEVEN R. FELDSTEIN
DIAN B. EMERSON
HELLER, EHRMAN, WHITE & McAULIFFE
333 Bush Street
San Francisco, California 94104
Telephone: (415) 326-7600

Attorneys for Defendant
PAN AMERICAN WORLD AIRWAYS, INC.

FILED
Nov. 7, 1988

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARION KINDIG Plaintiff v. PAN AMERICAN WORLD AIRWAYS, INC., et al. Defendants	Case No. C-86-0198 RHS (ORDER)

Defendant Pan American World Airways,

Inc. ("Pan Am"), submitted an ex parte motion to (1) quash a subpoena directing the Honorable Robert H. Schnacke to appear at a deposition on November 7, 1988; (2) strike the accompanying notice of deposition requesting production of certain documents pursuant to FRCP Rule 34, (3) and/or for a protective order prohibiting the plaintiff from taking any discovery from Judge Schnacke. The motion was submitted to the General Duty Judge, the Honorable William W. Schwarzer, for consideration at the request of Judge Schnacke.

Upon consideration of the motion and the memorandum of points and authorities submitted therewith.

IT IS HEREBY ORDERED that the deposition subpoena commanding the Honorable Robert H. Schnacke to appear at a deposition on November 7, 1988 is quashed; that the Notice of Deposition filed on November 1, 1988 is striken in its entirety; that

plaintiff is prohibited from directing any further discovery requests to Judge Schnacke; and than an appropriate sanction be imposed upon plaintiff for the filing of such an unwarranted, frivilous, and vexatious discovery request. Plaintiff is hereby ordered to pay to Pan Am the amount of the reasonable expenses incurred by Pan Am in making this motion, including reasonable attorney's fee.

Dated: November 7, 1988

(signed)

William W. Schwarzer

United States District Judge

ORDER

No. 89

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

CERTIFICATE OF SERVICE

I, Marion Kindig, hereby certify that on the 2nd day of October, 1989, three copies for Writ of Certiorari in the above-entitled case were mailed in Houston, Texas, first class postage prepaid to:

Mr. Nick Geannacopulos
Seyfarth, Shaw, Fairweather & Geraldson
101 California Street, Suite 2900
San Francisco, California 94111-5858

Mr. Michael Foster
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, California 94104-2878

Mr. Vic Thuesen
14 Martha
Petaluma, California 94950

Mr. Peter Shinevar
Bredhoff & Kaiser
1000 Connecticut Avenue, N. W.
Washington, D. C. 20036

counsel of record for the respondents herein.

I further certify that all the parties

required to be served have been served. Three copies have additionally been sent to the Ninth Circuit Court of Appeals. The respondents in the Motion to Investigate the Fraud Upon the Court, who do not have counsel of record, have been served with one copy each.

Marion Kindig

Marion Kindig
P. O. Box 19751
Houston, Texas 77224
(713) 785-1767
Petitioner in Pro Se

No. 89

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

CERTIFICATE OF SERVICE

I, Marion Kindig, hereby certify that on on the 21st day of November, 1989, three copies of the corrected Petition for a Writ of Certiorari in the above-entitled case were mailed in a Post Box in Houston, Texas, first class postage prepaid, to:

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